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**LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL**

**APPENDIX A:
COMPLIANCE SUPPLEMENT
FOR AUDITS OF LSC RECIPIENTS**

November 2015

Supersedes “Appendix A” contained in the Audit Guide for Recipients and Auditors (November 1996) (“Audit Guide”)

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COMPLIANCE SUPPLEMENT FOR AUDITS OF LSC RECIPIENTS

The "Compliance Supplement for Audits of LSC Recipients" ("Compliance Supplement") describes regulatory compliance requirements that apply to all recipients of funds from the Legal Services Corporation ("Corporation" or "LSC"). A recipient's failure to observe the requirements could have a direct or indirect material effect on its financial statements. In addition, these regulatory requirements are considered to have a material impact on the LSC program. Assessing compliance with these regulations is part of the annual audit of LSC recipients conducted under the general guidance of the Office of Management and

Budget (OMB) for audits of non-profit institutions. Beginning with the 1996 appropriation of Federal funds to LSC, LSC recipients have been required to adhere to certain additional prohibitions, restrictions and requirements (See Section 504(b) of Pub. L. 104-134 (1996) (the "1996 Act")). Although recipient adherence to all LSC regulations is required, LSC's regulations implementing the 1996 restrictions carry special reporting requirements. (See Section I.9.C of the LSC Audit Guide.) These regulations are identified in the text of the Compliance Supplement with an "_" and are as follows:

- PART 1610 - USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION
- PART 1612 - RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES
- PART 1617 - CLASS ACTIONS
- PART 1620 - PRIORITIES IN USE OF RESOURCES
- PART 1626 - RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS
- PART 1627 - SUBGRANTS AND DUES
- PART 1632 - REDISTRICTING
- PART 1633 - RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS
- PART 1635 - TIMEKEEPING REQUIREMENT
- PART 1636 - CLIENT IDENTITY AND STATEMENT OF FACTS
- PART 1637 - RESTRICTIONS ON LITIGATION ON BEHALF OF A PRISONER
- PART 1638 - RESTRICTION ON SOLICITATION
- PART 1639 - WELFARE REFORM
- PART 1643 - RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA AND MERCY KILLING
- PART 1644 - DISCLOSURE OF CASE INFORMATION

The special reporting requirements contained in Section 509(b) of the 1996 Act are to be carried out through the "Special Report on Noncompliance with Laws and

Regulations." The Independent Public Accountant (IPA) is to select and test a representative number of transactions and report to the recipient during the course of

the audit all instances of noncompliance relating to the “_” regulations. **For purposes of the special reporting requirements only, these instances of noncompliance shall include those relating to substantive practice issues and not to procedural or administrative items.**¹ The recipient is to report in writing to the Office of Inspector General (OIG) within five business days any instances of noncompliance the auditor has found. If the recipient fails to notify the OIG within the specified time, the auditor must report the noncompliance directly to the OIG. (See Section II.1.H of the Audit Guide.) This process of referring the instances noted in the "Special Report on Noncompliance with Laws and Regulations" is referred to as the "Five-Day Letter."

Overview

This Compliance Supplement is divided into three parts, A, B and C. Part A identifies items IPAs need to consider during the audit planning process. Part B provides a brief overview of the recordkeeping and regulatory requirements that came into effect in 1998. Part C identifies compliance requirements that are specific to the Corporation's grant programs,

¹ The regulations marked for inclusion in the 5-day reporting requirement are those related to the practice restrictions and prohibitions created by the 1996 appropriation legislation. For 5-day reporting, the OIG is interested if an IPA finds actual instances of cases or matters that violate those restrictions and prohibitions. The types of findings that should not be reported in a 5-day letter include issues such as absence of policies and procedures required under the regulations, lack of signatures on forms, and similar procedural problems (unless, as a result of the weakness cited, a grantee participated in an actual case or matter that violated the restrictions and prohibitions).

with reference to the specific Code of Federal Regulations (“CFR”) or statutory citations, where applicable.

Part C also provides suggested audit procedures to assist the IPA in planning and performing tests of the recipient's compliance with these requirements. The IPA will be required to exercise judgment to determine whether the suggested audit procedures are sufficient and whether additional or alternative audit procedures are needed. Moreover, determining the nature, timing, and extent of the audit procedures necessary to meet the audit objectives is the IPA's responsibility. **If a suggested audit procedure is not performed, the IPA is to document in the workpapers the alternative procedures used to accomplish the objective. (These alternative procedures will be examined during OIG quality reviews of workpapers.)**

It should be noted, however, that the OIG has established certain minimum requirements for the testing of recipients' compliance with applicable laws and LSC regulations.

The OIG provides the suggested audit procedures as guidance to the IPAs. The procedures do not preclude the use of the IPA's professional judgment in developing additional or alternative procedures based on the conditions noted during the audit.

IPAs performing an audit using this Compliance Supplement must review the Legal Services Corporation Act, 42, U.S.C. § 2996 et seq., (LSC Act) and regulations (including the regulations' supplementary information) to obtain an understanding of the compliance requirements. The compliance requirements summarized in this Compliance Supplement reflect those contained in the LSC regulations.

IPAs must recognize that laws and regulations change periodically and that delays may occur between such changes and updates to this Supplement. Furthermore, IPAs must be aware that there may be provisions of contracts and grant agreements that are unique to a particular LSC recipient. The specific requirements of any such arrangements between the recipient and LSC are not detailed in this Supplement, but are to be identified and assessed by the IPA.

Notwithstanding Sections 200.518, 200.519 and 200.520 of 2 CFR 200, Uniform Guidance (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), which allows for reduced audit coverage, Section 1009(c)(1) of the LSC Act requires an

annual financial audit of each entity receiving financial assistance from LSC. See 42 U.S.C. § 2996h(c)(1). Section 509(a) of the 1996 Act requires such audits to be carried out in accordance with Generally Accepted Government Auditing Standards (GAGAS).

Even in the absence of Section 1009(c)(1) of the LSC Act, it is highly unlikely that an LSC recipient would be considered a "low-risk auditee" based on the criteria defined in Sections 200.519(b), (c) and (d) of 2 CFR 200, Uniform Guidance (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)(*see* Section 200.520 of 2 CFR 200, Uniform Guidance (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)). Therefore, the LSC grant is to be considered high-risk.

This Compliance Supplement is effective for audits of fiscal years ending on or after December 31, 2015 and supersedes the previous edition of the Compliance Supplement issued in December 1998, including all previously issued Audit Bulletins and related audit guidance.

PART A. AUDIT PLANNING CONSIDERATIONS

The OMB Compliance Supplement does not apply to LSC funds. The Compliance Supplement For Audits of LSC Recipients, (Appendix A) to the Legal Services Corporation Audit Guide for Recipients and Auditors, identifies the laws and regulations that apply to LSC funds under an audit conducted in accordance with 2 CFR 200, Uniform Guidance (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). The IPAs are expected to cite the Compliance Supplement for Audits of LSC Recipients in their reports on Compliance with Requirements applicable to Major Programs and Internal Controls over Compliance in accordance with the Uniform Guidance Section 200.515(c). IPAs should be aware that if non-LSC funds (Federal or state) of a recipient are subject to consideration under a Uniform Guidance audit, the OMB Compliance Supplement may otherwise apply to those funds.

In order to successfully complete this audit, the IPA must review the following documents and publications.

- Regulations of the Legal Services Corporation
- Legal Services Corporation Office of Inspector General Audit Guide for Recipients and Auditors (November 1996) Legal Services Corporation Office of Inspector General “Single Audit Clearinghouse: CFDA Number”
- Legal Services Corporation Accounting Guide for LSC Recipients (August 2010)
- Memorandum from John A. Tull, Director, Office of Program Operations, to all LSC Program Directors and Board Chairs entitled “Certification of Program Integrity” (Oct. 30, 1997) (the “LSC Program Integrity Memorandum”)
- Memorandum from John A. Tull, Director, Office of Program Operations, to all LSC Program Directors regarding “Recordkeeping Requirements” (Dec. 8, 1997) (the “LSC Recordkeeping Requirements Memorandum”)
- Program Letter 98-5, “Case Information Disclosure--Semiannual Reports Required by 45 CFR Part 1644” (July 2, 1998)

These documents and publications should be in the possession of the recipient and be made available for use by the IPA. The LSC website, www.lsc.gov, also contains these documents for viewing. If you have any questions or need assistance, please call our Audit Help Line at (202) 295-1671, e-mail us at audits@oig.lsc.gov or fax us at (202) 337-6616.

Be advised that LSC has issued specific guidance on many of the regulations covered in this Compliance Supplement. LSC’s Office of Legal Affairs has issued Advisory Opinions over the years and LSC Management has issued guidance in the form of Program Letters. All of these documents can be found on LSC’s website. Furthermore, specific guidance clarifying certain aspects of select regulations has also been provided by LSC directly to the grantees themselves.

The OIG routinely evaluates audits conducted by IPAs. The OIG may reject a compliance audit report and require corrective action if the quality reviews indicate the audit tests performed were inadequate. Major deficiencies in the audit may result in removal and/or debarment of the IPA (see 45 CFR Part 1641), referrals to the AICPA and/or the appropriate state board of accountancy. Quality control reviews conducted by the OIG have identified deficiencies where IPAs have not adequately documented the audit work performed and conclusions reached in accordance with *Government Auditing Standards*. The IPA's assessment of the requirements contained in the Compliance Supplement shall be adequately documented in his or her work papers evidencing the audit work performed and conclusions reached.

References throughout the text to the longstanding OMB guidance are as currently detailed in LSC's published regulations and have been presented for comparison purposes only. The reader should take into account that this guidance has been updated and superseded by OMB's Uniform Guidance ([2 CFR 200, Uniform Guidance \(Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards\)](#)).

PART B. ADDITIONAL REQUIREMENTS

RECORDKEEPING REQUIREMENTS

By memorandum from the Director, Office of Program Operations, to all LSC Program Directors regarding "Recordkeeping Requirements" (Dec. 8, 1997) (LSC Recordkeeping Requirements Memorandum), LSC prescribed certain mandatory recordkeeping requirements (by providing recipients with forms and procedures). Furthermore, recipients must either use the sample forms provided by LSC or other forms approved by the IPA identifying the same information. The regulations affected by these recordkeeping requirements are as follows:

- 45 CFR §1609.4 (detail of recordkeeping requirement on fee-generating cases and sample form)
- 45 CFR §1612.10 (detail of recordkeeping requirement)
- Semiannual Report on Legislative and Rulemaking Activities Conducted Pursuant to 45 CFR §1612.6 (sample form)
- 45 CFR §1617.4 (detail of recordkeeping requirement on class action cases)
- 45 CFR §1620.7 (detail of recordkeeping requirement relating to priorities) Annual Report of Non-Priority Cases pursuant to 45 CFR §1620.7(b) (sample form)
- 45 CFR §1626.12 (detail of recordkeeping requirement on citizenship or eligible alien status)
- 45 CFR §1627.8 (detail of recordkeeping requirement)
- 45 CFR §1633.4 (detail of recordkeeping requirement relating to evictions and sample form)

- 45 CFR §1636.5 (detail of recordkeeping requirement for client identity and Statement of Facts)
- 45 CFR §1637.5 (detail of recordkeeping requirement for representation of prisoners)

LSC has also issued Program Letter 98-5, which provides guidance as to the timing and format of the semiannual case disclosure report required by 45 CFR Part 1644. The reports must be submitted by recipients to LSC on the sample form provided by LSC or on other forms containing the same information requested by LSC.

The IPA must ensure that all recordkeeping requirements have been met by the recipient. The IPA's review of these requirements shall be adequately documented in his or her workpapers evidencing the audit work performed and conclusions reached.

CERTIFICATION REQUIREMENT ON PROGRAM INTEGRITY

By December 31 of each year, each LSC recipient's governing body is required under 45 CFR Part 1610 to certify that the program is in compliance with the program integrity requirements of §1610.8. To provide guidance on the certification process and the requirements of 45 CFR Part 1610, LSC distributed a memorandum from the Director, Office of Program Operations, to all LSC Program Directors and Board Chairs regarding "Certification of Program Integrity" (Oct. 30, 1997) (the "LSC Program Integrity Memorandum"). The Program Integrity Memorandum contains the following attachments: (a) Certification of Program Integrity; (b) Guidance in Applying the Program Integrity Standards; and (c) Instructions for Certification of Program Integrity.

PART C. COMPLIANCE REQUIREMENTS

INTRODUCTION

The specific requirements for allowable or unallowable activities are detailed in the regulations and applicable statutory provisions. In order to assist the IPA, the specific compliance requirements are provided in summary form under this part, together with audit procedures unique to the specific compliance requirement. The explanations of the compliance requirements included under this section do not include the full text of each applicable regulatory or statutory provision. To fully understand these requirements IPAs must review the complete text of the relevant statutes and regulations, which are available on LSC's web site, at www.lsc.gov.

The primary objective of the audit procedures detailed in the Compliance Supplement is to ensure that the audit results provide reasonable assurance the LSC recipient complied with the LSC Act, regulations and other applicable law. Based upon OIG experience, for purposes of

compliance assessment, these procedures represent a minimum level of inquiry and testing expected to be performed by the IPA.

SAMPLE SELECTION OF CASE FILES

The IPA shall select a representative sample of case files. IPAs should sample a minimum of 60 case files and interview at least 5 percent of the recipient's staff, and in no case fewer than five individuals, when assessing recipients' compliance with laws and regulations. The IPA is to document in the work papers the case sampling methodology, including how the sample size was determined and the total universe of cases from which the sample was selected. The case sample shall be selected from a universe that includes:

- cases from the main and branch offices;
- cases representing different subject areas from different units/project groups; and
- cases with different levels of legal representation.

During this review of case files, attention shall be given to assessing compliance with the applicable requirements of 45 CFR Parts 1609, 1611, 1613, 1615, 1617, 1620, 1626, 1632, 1633, 1636, 1637, 1639, 1643, 1644 and the other statutory mandates identified in this Compliance Supplement.

TESTING CONSIDERATIONS

The IPA should obtain an understanding of the internal controls in place to ensure compliance with the requirements detailed in each regulation, and review the recipient's policies and procedures to ensure they conform to the requirements of the tested regulation.

Several LSC regulations cannot be tested through the review of case files. Compliance with these regulations must be assessed through the procedures provided in the Compliance Supplement or through alternative, adequately documented procedures. **Audit work performed and conclusions reached must be documented.** Please note that the regulations that can be tested as part of the review of case files are identified in the previous section.

When a regulation requires the IPA to interview a sample of recipient staff, such interviews are to include managerial, professional, and support staff. Any interviews conducted with staff must be adequately documented and evidence sufficient inquiry for the IPA to render a conclusion. This conclusion must be documented in the workpapers. The OIG strongly recommends that the staff interviews be conducted in person, face to face, whenever possible.

When testing compliance with 45 CFR Part 1630 the IPA is advised to test a sample of transactions for conformance with the cost allowability standards of Part 1630.3(a)-(h). This procedure has always been separate from any payroll testing done as part of the financial statement audit. Although the IPA may rely on some aspects of its payroll testing, the IPA is

| expected to test other transactions pursuant to assessing compliance with these cost allowability standards.

Furthermore, any tests of disbursements done for purposes of this Compliance Supplement must include a documented assessment in the workpapers by the IPA of the financial related procedures set forth for testing compliance with the applicable provisions of 45 CFR Parts 1608, 1610, and 1612.

If the IPA discovers a violation of LSC regulatory restrictions and/or prohibitions, he or she must clearly document in the workpapers the specific details of the violation and, if the IPA does not report the violation as a finding, his or her rationale for not reporting the violation.

ACCESS TO RECORDS

The IPA should be provided access to any records that, in the IPA's judgment, are necessary to complete the audit. If the recipient asserts attorney client privilege, or in any other manner attempts to deny the IPA access to necessary documents or relevant portions thereof, the IPA is to contact the OIG immediately.

SPECIFIC REQUIREMENTS

1604 OUTSIDE PRACTICE OF LAW

LSC Regulations

45 CFR 1604

Compliance Requirement

While the LSC Act is silent with respect to the outside practice of law by part-time recipient attorneys, the Act requires LSC to ensure that full-time recipient attorneys do not engage in compensated outside practice. See 42 U.S.C. § 2996f (a)(4)(A). Under 45 C.F.R. § 1604, however, recipients are authorized (but not required) to permit full-time attorneys to engage in uncompensated outside practice of law.

Under Part 1604, recipients are required to adopt written policies governing the outside practice of law by full-time attorneys; such policies must be consistent with the LSC Act and the applicable rules of professional responsibility. Such policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

A recipient's outside-practice policies may permit full-time attorneys to engage in outside practice of law if:

(a) The recipient's director (or the director's designee) determines that a particular representation would be consistent with the attorney's responsibilities to the recipient's clients;

(b) Except in the case of court appointments, the attorney undertaking outside practice does not intentionally identify the case or matter with the Corporation or the recipient; and

- a. The attorney is newly employed, has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible on his or her own time; or

- b. the attorney is undertaking the representation to participate in certain types of voluntary, pro bono or legal referral programs.

A recipient's policies must not permit a full-time staff attorney to receive compensation for outside practice except for payment for work closing cases from a previous law practice.

A recipient's policies may permit a full-time attorney to make de minimus use of recipient resources for outside cases or matters, so long as such use is necessary for the attorney to fulfill professional responsibilities; but such resources must not be used for activities for which the use of those funds would otherwise be prohibited.

A recipient's written policies may also allow full-time attorneys to accept court appointments under the circumstances and limitations detailed in Part 1604.7.

Suggested Audit Procedures

- Obtain an understanding of the policies, practices and internal controls in place to ensure compliance with the requirements of 45 CFR § 1604.
- Determine that written policies and procedures are in place to ensure that an employee of the recipient does not undertake an activity in violation of 45 CFR § 1604. Review the recipient's written policies and procedures to ensure they conform to the requirements of 45 CFR § 1604.
- Determine how the recipient ensures that the policies and procedures detailing the requirements of 45 CFR § 1604 are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity that may fall under the requirements of this regulation. Follow up on all such possible occurrences.

1608 PROHIBITED POLITICAL ACTIVITY

LSC Regulations

45 CFR §§ 1608.3, 1608.4, 1608.5 and 1608.6

Compliance Requirement

While employed under the LSC Act, no staff attorney (as defined at 45 CFR §

1600.1) shall, at any time, (a) use official authority or influence for the purpose of

interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan; (b) directly or indirectly coerce, command or advise an employee of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or (c) be a candidate for partisan elective office (45 CFR § 1608.5). For purposes of LSC regulations, the term “political” refers to “that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose” (45 CFR § 1600.1)

LSC funds, personnel or equipment may not be used or made available to any political party or association, to the

campaign of any candidate for public or party office, or for use in advocating or opposing any ballot measure, initiative or referendum (45 CFR § 1608.3(b)).

LSC funds may not be used or made available for prohibited political activities. While engaged in legal assistance activities supported under the LSC Act, no attorney shall engage in, any activity to provide voters with transportation to the polls or any similar assistance in connection with an election, or any voter registration activity (45 CFR §§ 1608.4(b), 1608.6).

These requirements do not, however, prohibit an attorney from providing any form of legal assistance to an eligible client, and may not interfere with the fulfillment of any attorney's professional responsibilities to a client (45 CFR § 1608.7).

Suggested Audit Procedures

- Review policies or recipient practices in place to ensure that no recipient and/or employee or attorney of the recipient undertakes an activity in violation of 45 CFR §§ 1608.3(b), 1608.4, 1608.5, 1608.6, and 1608.7.
- Determine how the recipient ensures that the policies/practices are effectively communicated to staff and whether these policies/practices are followed by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity prohibited by 45 CFR § 1608. Follow up on any such alleged prohibited activity.
- Determine whether the recipient expended grant funds or contributed personnel or equipment in violation of the requirements of 45 CFR § 1608.3(b).
- Examine expenditures for payments or contributions:
 - a) to any political party or association;
 - b) to the campaign of any candidate for public or party office; and
 - c) for use in advocating or opposing any ballot measure, initiative, or referendum.

1609 FEE-GENERATING CASES

LSC Regulations

45 CFR §§ 1609.2, 1609.3 and 1609.4

Compliance Requirement

Definition of a fee-generating case: any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party (45 CFR §1609.2(a)).

Excluded from definition of fee-generating case: any case where (1) a court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or (2) a recipient undertakes representation under a contract with a government agency or other entity (45 CFR §1609.2(b)).

Recipients may not use Corporation or private funds to provide legal assistance in a fee-generating case unless:

- (1) the case was rejected by a local lawyer referral service or by two private attorneys;
- or
- (2) neither the referral service nor two private attorneys would consider the case without payment of a consultation fee (45 CFR §1609.3(a)).

Recipients may provide legal assistance in a fee-generating case without first attempting referral only when:

(1) an eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled (45 CFR § 1609.3(b)(1));

(2) the recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee (45 CFR § 1609.3(b)(2); or

(3) the director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) documented attempts to refer similar cases in the past generally have been futile;

(ii) emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available (45 CFR § 1609.3(b)(3)).

Attorneys' fees received by a recipient for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation (45 CFR § 1609.4(a)).

Attorneys' fees received are to be recorded during the accounting period in

which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received (45 CFR § 1609.4(b)).

Each recipient must have written policies and procedures to guide its staff in complying with this rule and must maintain records sufficient to document the recipient's compliance with this rule (45 CFR § 1609.6).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1609. Review the recipient's policies and procedures to ensure that fee-generating cases are accepted by the recipient in accordance with the requirements of 45 CFR § 1609.
- Review whether appropriate procedures have been established for referral of fee-generating cases and evaluate whether the procedures conform to the requirements of 45 CFR § 1609.3.
- Determine how these policies and procedures are effectively communicated to staff and whether such policies and procedures are followed by staff. Interview recipient staff, including intake workers, as to their knowledge concerning the possible existence of any fee-generating case that was undertaken improperly by the recipient. Follow up on all such possible occurrences to determine if the case was a fee-generating case and if representation was authorized pursuant to the regulation.
- Interview the Executive Director and a sample of recipient attorney staff about the requirements of 45 CFR § 1609 and **inquire as to their knowledge of any instances in which fees were received by the recipient but not recorded in the accounting records. Follow up on all such possible occurrences.**
- Determine whether the recipient has complied with the LSC Recordkeeping Requirements Memorandum's recordkeeping requirements that apply to cases accepted pursuant to Part 1609. Adequately document this assessment in the workpapers.

- Confirm that the recipient has complied with the allocation and recordation requirements contained in 45 CFR § 1609.4(a) and (b). Adequately document this assessment in the workpapers.
 - Review and test method of allocating fees and related expenses associated with fee-generating cases to the various funds. Verify that the fees were recorded in the same fund to which the related expenditures were charged, as required by 45 CFR § 1609.4(a).
 - Verify that fees awarded to a recipient were not recorded as revenue until received, as required by 45 CFR § 1609.4(b).

- As part of its recordkeeping system, the recipient must maintain a separate file identifying and summarizing each instance in which a fee-generating case, other than cases accepted under §1609.3(b)(2), was accepted. (LSC's sample form, provided with the LSC Recordkeeping Requirements Memorandum, should be used for the summary.) Inspect this file for completeness. If the recipient accepted fee-generating cases, select a sample of these cases to ensure that they comply with the regulation. **Note** that recipients are required to establish a recordkeeping system which includes appropriate documentation (in individual case files or elsewhere) indicating the basis for taking each fee-generating case, other than cases accepted under §1609.3(b)(2), including records that: (a) indicate the date when a referral was rejected by the lawyer's referral service; or (b) indicate the names of two private attorneys who rejected the referral; or (c) indicate that neither the lawyer referral service nor two named private attorneys would consider the referral without prepayment of a consultation fee; or (d) indicate that the recipient's Executive Director (or the Executive Director's designee) has determined that the case cannot be referred to the private bar because: (1) documented past attempts to refer similar cases have generally been futile; or (2) emergency circumstance compelled the recipient to take immediate action before referral could be made of a fee-generating case; or (3) recovery of damages was not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.
 - **Also note** that for court-appointed cases that would otherwise be considered to be fee-generating, recipients should include in the client's file or in a central file copies of the court order directing that the recipient or employee of the recipient provide representation in the case and a copy of the statute or court rule that permits such appointment. If the appointment was made orally or was subject to an unwritten practice, the recipient should include an appropriate written description of the appointment or practice.
 - If the recipient relies on §1609.3(b)(2), relating to consultation with the private bar, to accept a fee-generating case without first attempting referral, the recipient must maintain: (a) a memorandum containing the names of appropriate representatives of the private bar with whom the recipient has discussed fee-generating cases and the bases on which the recipient has concluded that private attorneys in its service area do not accept, or do not

accept without prepayment of a fee, particular types of fee-generating cases; and (b) a list of the types of such fee-generating cases that private attorneys do not accept. Inspect this documentation for compliance with the LSC Recordkeeping Requirements Memorandum's recordkeeping requirements.

- **In conjunction with the review of the sampled case files and discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1610 USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

LSC Regulations

45 CFR § 1610

Compliance Requirement

Overview

Restrictions on recipients' activities are contained in the LSC Act as well as in annual LSC appropriations acts (most significantly in Pub. L. 104-134, as incorporated in subsequent LSC appropriations legislation). LSC Act restrictions apply to LSC funds with significant extensions to private funds, but allow public, IOLTA and tribal² funds to be used for the specific purposes for which they are granted.

Most of the appropriations act restrictions are "entity restrictions" which forbid recipients of LSC funds from conducting restricted activity with any funds (with a narrow exception for Indian tribal

funds). With some exceptions discussed below under § 1610.7, any transfer of LSC funds to another entity carries appropriations act restrictions (and LSC Act restrictions on private funds) to all of that entity's funds. On the other hand, transferred non-LSC funds do not carry restrictions along with them. Regardless of whether funds are transferred to another entity, the extent to which a recipient may share staff and facilities with another organization that conducts restricted activities is limited by the program integrity standards of 45 CFR § 1610.8.

Specific Restrictions

Use of Funds for Restricted Activities

The LSC Act restrictions are listed under the rubric of "purpose prohibited by the LSC Act" at 45 CFR § 1610.2(a). LSC

2. "Tribal funds" means funds received from an Indian tribe or from a private nonprofit foundation for the benefit of Indians or Indian tribes (45 CFR §1610.2(h)). This regulatory definition is slightly broader than the definition found in the LSC Act.

funds and private funds may not be used for these activities; but public, IOLTA or tribal funds may be so used, provided the use is consistent with the specific purposes for

The appropriations act restrictions are listed under the rubric of "activity prohibited by or inconsistent with section 504" at § 1610.2(b). No recipient funds, whether LSC or non-LSC, may be used for such activities, (45 CFR §§ 1610.2(b), 1610.3), except: (1) Indian tribal funds may be used for the specific purposes for which they were provided (45 CFR §§1610.2(h), 1610.4(a)); (2) non-LSC funds may, under the conditions specified in 45 CFR § 1612, be used to respond to a written request from a governmental agency or official, legislative body or elected official to testify orally or in writing; provide information, analysis or comments on existing or proposed rules, regulations, or legislation; or participate in negotiated rulemaking, and (3) restrictions governing representation in criminal proceedings and collateral attacks on criminal convictions, prisoner litigation and representation of aliens do not apply to (a) a recipient's or subrecipient's separately funded public defender program or project; or (b) criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment (45 CFR § 1610.6). The foregoing exceptions also apply to LSC Act prohibitions discussed below (45 CFR §§ 1610.4(a), 1610.6).

Income Ineligible Client

A recipient may use any non-LSC funds to provide legal assistance to a financially ineligible (over-income) client, provided the funds are used for the specific purposes for which they were provided and the activity is not otherwise prohibited by

which they were provided (45 CFR §§1610.2(a), 1610.2(c), 1610.2(e), 1610.2(f), 1610.4(b)).

the LSC Act or Section 504 (45 CFR § 1610.4(d)).

Contributions Received from Non-LSC Sources

Except for contributions of less than \$250, no recipient may accept funds from any source other than the Corporation, unless it provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds (45 CFR § 1610.5).

Restrictions on Transferred Funds

If a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in 45 CFR § 1610 apply both to the LSC funds transferred and to the non-LSC funds of the person or entity to whom those funds are transferred, with the following provisos:

(1) with respect to the requirements of 45 CFR § 1620 on priorities, the transferee shall either:

(i) use the funds transferred consistent with the recipient's priorities; or
(ii) establish its own priorities for the use of the funds transferred consistent with 45 CFR § 1620;

(2) with respect to the requirements of 45 CFR § 1635 on timekeeping, the transferee is required only to maintain records of time spent on each case or matter undertaken with the funds transferred and

need not maintain such records in the form required by 45 CFR § 1635; and

(3) for a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR § 1614, the prohibitions or requirements of 45 CFR § 1610 shall apply only to the funds transferred and not to the transferee's other funds (45 CFR § 1610.7).

Program Integrity

A recipient must have objective integrity and independence from any organization that engages in restricted activities. A relationship with another organization will meet this standard if:

(1) the other organization is a legally separate entity;

(2) the other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and

(3) the recipient is physically and financially separate from the other organization.

Mere bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. Factors relevant to this determination include but are not limited to: (i) the existence of separate personnel; (ii) the existence of separate accounting and timekeeping records; (iii) the degree of separation from facilities in which restricted activities occur, along with the extent of such restricted activities; and (iv) the extent to which signs and other forms of identification which distinguish the recipient from the organization are present (45 CFR § 1610.8(a)). The presence or absence of any one or more of the foregoing factors should not be determinative.

The governing body of each recipient must certify annually to the Corporation that the recipient is in compliance with the program integrity requirements described in 45 CFR § 1610 (45 CFR § 1610.8(b)).

Funds received by a recipient from a source other than the Corporation must be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation (45 CFR § 1610.9).

Suggested Audit Procedures

- Determine how the recipient ensures compliance with this regulation. Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1610. Review policies and procedures.
- Obtain an understanding as to how the restrictions are communicated to staff and whether these are adhered to by staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter that may fall under the restrictions of this regulation. Follow-up on all such possible occurrences.

- Inspect the recipient's Certification of Program Integrity for the current audit period to ensure that the program is in compliance with the program integrity requirements of 45 CFR §1610.8. In conjunction with the inspection of the annual Certification of Program Integrity, review the Executive Director's contemporaneous written report required by the LSC Program Integrity Memorandum to be submitted to the recipient's Board of Directors. **Confirm that the written report was provided to the recipient's Board of Directors and that it contains the elements required by the LSC Program Integrity Memorandum.** Review any leases, contracts, agreements, arrangements, understandings or relationships that the recipient, its staff or its board has entered into with entities (organizations or individuals) engaged in restricted activities to ensure compliance with 45 CFR § 1610.8 and the LSC Program Integrity Memorandum. (These entities may include individual private practitioners, law firms, not-for-profit organizations, public interest groups, etc.)
- Sample transactions (payments/ transfers) with entities (organizations or individuals) that are known to be involved in restricted/ prohibited activities in order to ascertain that any such transactions comply with 45 CFR § 1610.
- Review the recipient's accounting system (chart of accounts, general ledger, etc.) to ascertain whether it provides for a separation of receipts and disbursements of LSC and non-LSC funds in accordance with the requirements of 45 CFR § 1610.9.
- Review the recipient's method of allocating expenses between LSC and non-LSC funds to ascertain whether it ensures that non-LSC funds, except as permitted by 45 CFR § 1610, are not used for prohibited activities as defined by 45 CFR § 1610.3.
- Interview appropriate personnel and review grant and contract agreements for non-LSC funds to determine whether activities that LSC restrictions permit to be undertaken with non-LSC funds (e.g., responding to requests of legislators or agency officials under Part 1612, payment of dues under Part 1627, etc.) may be undertaken with the particular non-LSC funds under review.

1611 FINANCIAL ELIGIBILITY

LSC Regulations

45 CFR §§ 1611.3, 1611.4, 1611.5, 1611.6, 1611.8 and 1611.9

Compliance Requirements

The governing body of a recipient must adopt guidelines for determining the financial eligibility of persons seeking legal assistance under the LSC Act. (45 CFR §1611.3(a)). The governing body is to review these guidelines at least once every three years and make any necessary adjustments (45 CFR § 1611.3(a)).

Income Ceilings

Each recipient is required to establish a maximum annual income level for persons to be eligible to receive legal assistance under the LSC Act, which is not to exceed one hundred and twenty-five percent (125 percent) of the amounts specified in the current official Federal Poverty Income Guidelines (45 CFR § 1611.3(c)(1)). See the Appendix to 45 CFR § 1611 for LSC's current applicable income levels.

Recipients may not use LSC funds to represent individuals whose annual income exceeds the established ceiling unless: (a) the client's gross income is under 200 percent of poverty line; and (b) the applicable asset ceiling, if exceeded, has been waived pursuant to a policy established by the recipient's governing body (45 CFR § 1611.5(a)); and (c) the client file includes documentation supporting the authorization

of a 45 CFR § 1611.5(a) exception (45 CFR 1611.5(b)).

In addition, a client may be deemed eligible to receive legal services without regard to any absolute upper income limit where: (a) the client is seeking legal assistance to maintain benefits provided by a governmental program for the poor; or (b) the Executive Director has determined, on the basis of documentation provided by the client, that the client's income is primarily committed to medical or nursing home expenses and the client would be income-eligible if only the portion of the client's income that is not devoted to such expenses were considered (45 CFR § 1611.5(a)(1)(2)).

The recipient must keep records of the number of over-income clients served and the factual basis for each such client when LSC funds are used (45 CFR § 1611.5(b)). Please note that recipients who receive Older Americans Act (OAA) funds for the representation of senior citizens are not permitted to use a means test in determining eligibility of clients represented with OAA funds. For this reason, LSC funds may not be used for the representation of clients whose representation is funded in part under an OAA grant.

Asset Ceilings

A recipient's governing body must establish "reasonable" asset ceilings for individuals and households. Such ceilings must take into account the assets of all persons who are resident members of an applicant's household, but may exclude from consideration a household's principal residence; vehicles; assets used in producing income; and other assets that are exempt from attachment under State or Federal law (45 CFR § 1611.3(d)(1)).

A recipient's asset ceilings must take into account the cost of living in the service area and other relevant factors, such as the number of clients who can be served by the recipient; the population that would be eligible at or below alternative income and asset ceilings; and the availability and cost of legal services provided by the private bar and other free or low-cost legal services providers in the area (45 CFR § 1611.3(g)).

Recipient policies may allow the Executive Director or his/her designee to waive the asset ceiling for applicants under "unusual circumstances." Recipients are required to record the reasons for such waivers and maintain such records as are necessary to inform the Corporation of the reasons the waivers were made (45 CFR § 1611.3(d)(2)).

Group Eligibility

LSC funds may be used to provide legal assistance to a group that is primarily composed of persons eligible for legal assistance under the Act and has no practical means of obtaining funds to retain private counsel, provided the group: (a) is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or (b) has as its principal activity the delivery of services to individuals who would be financially eligible for LSC-funded legal assistance (45 CFR § 1611.6(a)(1),(2)).

To make the requisite determination under Section 6(a)(1) a recipient must consider the resources available to the group, such as its income and income prospects, assets and obligations; and, with respect to a group primarily composed of individuals who would be eligible for LSC-funded legal assistance, whether the financial or "other socioeconomic characteristics" of the persons comprising the group are consistent with those of eligible persons (45 CFR § 1611.6(b)(1)(i)).

With respect to groups deemed eligible because they have as their principal

| activity the delivery of services to persons who would be deemed financially eligible for LSC-funded legal services, recipients must determine whether the financial or “other socioeconomic characteristics” of those served by the group are consistent with those of eligible persons, and whether the assistance the group seeks relates to the group’s principal activity (45 CFR § 1611.6(b)(1)(ii)).

Recipients must collect information that “reasonably” demonstrates that represented groups meet the foregoing eligibility criteria (45 CFR § 1611(b)(2)).

Other Requirements

The recipient must execute a retainer agreement with each client when extended service representation commences or as soon thereafter as is practicable. No written retainer agreement is required when the recipient is merely providing advice and counsel or brief service, or when legal services are being provided by a private attorney pursuant to the private attorney involvement provisions of 45 CFR § 1614 (45 CFR § 1611.9).

Each recipient must specify in its financial eligibility policy that, in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient will consider only the income and assets of the applicant and members of the applicant’s household other than the alleged perpetrator of the domestic violence, and shall not consider assets held solely by the alleged perpetrator or jointly held by the alleged perpetrator and the victim or by the alleged perpetrator and other members of the household (45 CFR § 1611.3(e)).

A recipient may adopt policies permitting financial eligibility to be established by reference to applicants’ recipient of benefits from a government program for low-income individuals or families, without requiring an independent determination of applicants’ income or assets, so long as the income standards of the applicable government program are at or below 125 percent of the Federal Poverty Guidelines and the program’s eligibility

standards include an asset test (45 CFR §§ 1611.3(f), 1611.4(c)).

A recipient may deem eligible an applicant whose income exceeds the applicable income ceiling if the applicant's assets do not exceed the applicable asset ceiling and:

(1) the applicant is seeking legal assistance to maintain benefits provided by a government program for low-income individuals or families (45 CFR § 1611.5(a)(1)); or

(2) on the basis of documentation, the recipient has determined that the applicant's income is primarily devoted to medical or nursing-home expenses and the applicant would be eligible were the portion of his or her income devoted to such expenses excluded from consideration (45 CFR § 1611.5(a)(2)); or

(3) the applicant's income does not exceed 200 percent of the applicable Federal Poverty Guidelines amount and:

(i) the applicant is seeking legal assistance to obtain government benefits for low-income individuals or families (45 CFR § 1611.5(a)(3)(i)); or

(ii) the applicant is seeking legal assistance to obtain or maintain government benefits for persons with disabilities (45 CFR § 1611.5(a)(3)(ii)); or

(4) the applicant's income does not exceed 200 percent of the applicable Federal Poverty Guidelines and the recipient has determined the applicant should be considered financially eligible based on one or more of the following factors as

applicable to the applicant or members of his or her household:

(i) current income prospects, taking into account seasonal variations in income;

(ii) unreimbursed medical expenses and medical insurance premiums;

(iii) fixed debt and obligations;

(iv) expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training or educational activities in preparation for employment;

(v) non-medical expenses associated with age or disability;

(vi) current taxes; or

(vii) other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance (45 CFR § 1611.5(a)(4)).

Recipients must document the basis for their financial eligibility determinations under Part 1611.5 and maintain such records as are sufficient to inform the Corporation of the specific facts and factors they relied upon in making such determinations (45 CFR § 1611.5(b)).

Manner of Determining Financial Eligibility

Recipients are to make "reasonable inquiry" regarding the sources of applicants' income, income prospects and assets, and are to adopt simple intake forms and

procedures to determine financial eligibility in such a manner as to promote the development of trust between client and attorney (45 CFR § 1611.7(a),(b)).

If there is substantial reason to doubt the accuracy of an applicant's financial eligibility information, recipients are to make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship (45 CFR § 1611.7(c)).

Change in Financial Eligibility Status

Once a recipient has determined that a client is financially eligible for service it may request another recipient to extend legal assistance to the client in the same case or matter in reliance upon the first recipient's eligibility determination. So long as the second recipient is provided with (and retains) a copy of the original recipient's intake documentation, the second recipient is not required to make an independent eligibility determination unless there has been a change in the client's status (as described in the next paragraph), or there is substantial reason to doubt the validity of the original eligibility determination (45 CFR § 1611.7(d)).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1611. Review the recipient's policies and procedures, specifically those relating to compliance with 45 CFR §§ 1611.3, 1611.4, 1611.5 and 1611.6, to ensure they conform to the requirements of 45 CFR § 1611.
- Obtain an understanding of the recipient's electronic client intake system and processes to determine how it ensures compliance with this regulation and that only financially eligible individuals are provided legal services. Adequately document this assessment in the workpapers.

If, after determining a client is eligible to receive services, a recipient becomes aware that the client is ineligible, either because of newly-disclosed information regarding the client's financial circumstances or a lasting, substantive change in the client's financial position which would enable the client to afford private legal assistance, the recipient must discontinue representation of the client using LSC funds so long as doing so is not inconsistent with applicable rules of professional responsibility (45 CFR § 1611.8(a),(b)).

When providing extended service to a client a recipient must execute a written retainer agreement, which must be executed when the representation commences or as soon thereafter as is practicable (45 CFR § 1611.9(a)). The agreement must include a description of the legal problem for which representation was sought and the nature of the legal services to be provided (45 CFR § 1611.9(a)). The recipient must maintain copies of all retainer agreements executed in accordance with this section (45 CFR § 1611.9(c)).

- Determine how the recipient ensures that the requirements of 45 C.F.R. § 1611 have been effectively communicated to staff and whether these requirements are followed by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity prohibited by 45 C.F.R. § 1611. Follow up on any such alleged prohibited activity.
- Determine if the recipient has established a maximum annual income level, not in excess of 125 percent of the amount specified in the current official Federal Poverty Income Guidelines, for persons to be eligible to receive legal assistance under the LSC Act.
- Review the recipient's eligibility guidelines to ascertain whether they incorporate asset ceilings pursuant to 45 CFR § 1611.3(d)(1).
- Review the recipient's policies and procedures relating to determination of group eligibility to ascertain whether they are consistent with 45 CFR §1611.6.
- Review board minutes and resolutions to determine whether the recipient's Board of Directors has adopted guidelines for determining the eligibility of persons seeking legal assistance under the LSC Act; whether these guidelines are consistent with 45 CFR § 1611.3; and whether the Board has reviewed the eligibility guidelines on a triannual basis as required by 45 CFR § 1611.3(a).
- Determine whether intake and case acceptance policies and procedures are in place to ensure that the clients served with LSC funds are eligible in accordance with the requirements of 45 CFR § 1611.
 - a. Interview appropriate recipient staff responsible for the client intake process and eligibility determination;
 - b. Perform tests to ascertain if the recipient's records/database includes all the clients receiving services during the audit period; and
 - c. Select a sample of clients (intake records) receiving services and perform tests to ascertain whether the specific individuals were eligible in accordance with the eligibility requirements. (This step can be performed in conjunction with the review of the sampled case files.)
- Review recipient records as to the number of clients whose income exceeded 125 percent of the poverty line and were authorized to be served by the recipient with LSC funds and the factual basis for each such authorization in compliance with 45 CFR § 1611.5(b). Review a sample of files of over-income clients served to determine whether the factual basis for each authorization is documented and is consistent with the authorized exceptions identified in the regulation.
- Review recipient records to determine the number of clients whose assets exceeded the applicable ceiling and who were authorized to be served by the recipient with LSC funds,

as well as the factual basis for each such authorization in compliance with 45 CFR § 1611.3(d)(2). Review a sample of files of such clients to determine whether the factual basis for each authorization was documented and is consistent with the authorized exceptions identified in the regulation.

- Ascertain whether the recipient routinely executes a retainer agreement for each client when extended service representation commences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation.** This review shall determine adherence to the prescribed system. This review shall include the following components:
 - a. Examine case files for eligibility forms and signed retainer agreements.
 - b. Review eligibility determinations to assess whether the client's reported income level was within the maximum income levels established by the recipient.
 - c. If the client's reported income exceeds the recipient's income ceiling, determine whether the assistance provided the client was supported by non-LSC funds (45 FR § 1611.4(a)). If LSC funds were used and the client's gross income exceeded the maximum income level, but did not exceed 200 percent of the poverty line, establish that the recipient decided to waive the eligibility requirements on the basis of one or more factors set forth in 45 CFR § 1611.5(a); **or** the client was seeking legal assistance to obtain or maintain benefits provided by a governmental program for the poor; **or** the Executive Director determined, on the basis of documentation provided by the client, that the client's income was primarily committed to medical or nursing home expenses and the client would be financially eligible if only the portion of the client's income not devoted to such expenses were considered. (45 CFR § 1611.5(a)(1),(2)).

Recipients must document the basis for their financial eligibility determinations under Part 1611.5 and maintain such records as are sufficient to inform the Corporation of the specific facts and factors they relied upon in making such determinations (45 CFR § 1611.5(b)).

1612 RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

LSC Regulations

45 CFR §§ 1612.2, 1612.3, 1612.4, 1612.5, 1612.6, 1612.7, 1612.8, 1612.9, 1612.10, 1612.11

Compliance Requirement

With certain exceptions noted below, recipients are not to attempt to influence: (1) the passage or defeat of any legislation or constitutional amendment; (2) any initiative, referendum or similar measure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity; (3) any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or LSC; (4) the conduct of oversight proceedings concerning the recipient or LSC; (5) the issuance, amendment or revocation of any executive telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in (1)--(6) detailed above (45 CFR § 1612.3).

Recipients may not engage in any grassroots lobbying activity as defined in 45 CFR § 1612.2(a)(1) (45 CFR § 1612.4).

Recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to: (1) testify orally or in writing; (2) provide information which may include analysis of, or comments upon existing or proposed rules, regulations

or legislation, or drafts of proposed rules, regulations or legislation; (3) testify before or make information available to commissions, committees or advisory bodies; or (4) participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. §561, *et seq.*, or comparable State or local laws (45 CFR § 1612.6(a)). Communications made in response to such requests may be distributed only to a party who made the request or to other persons or entities only to the extent that such distribution is required to comply with the request (45 CFR § 1612.6(b)). Recipient employees are prohibited from soliciting or arranging testimony or the provision of information in connection with legislation or rulemaking (45 CFR § 1612.6(c)).

Recipients may use non-LSC funds to: (1) provide oral or written comment to an agency and its staff in a public rulemaking proceeding; or (2) to contact or communicate with, or respond to a request from a state or local government agency, a state or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient (45 CFR §§1612.6(e), 1612.6(f)).

No person shall, during working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation, participate in any public demonstration, picketing, boycott, or strike (except as permitted by law in connection with the employee's own employment situation) or encourage, direct, or coerce others to engage in such activities. No employee of a recipient shall at any time engage in or encourage others to engage in any: (1) rioting or civil disturbance; (2) activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or (3) other illegal activity that is inconsistent with an employee's responsibilities under applicable law, LSC regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law (45 CFR § 1612.7).

A recipient may not support or conduct training programs that: (1) advocate particular public policies; (2) encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; (3) disseminate information about such policies or activities; or (4) train participants to engage in activities prohibited by the LSC Act, other applicable law, or Corporation regulations, guidelines or instructions. A recipient is not prohibited from training attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them: (1) to provide adequate legal assistance to eligible clients; or (2) to provide advice to any eligible client as to the legal rights of the client (45 CFR § 1612.8).

No funds made available by LSC or by private entities may be used to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity (45 CFR § 1612.9(a)). This provision does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services. Recipients may provide legal assistance to eligible clients who desire to set up organizations, such as by preparing articles of incorporation and bylaws.

A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or LSC regulations (45 CFR § 1612.5(b)).

The following requirements apply to legislative and rulemaking activities under 45 CFR 1612.6: (1) recipients must maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request; (2) no funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in §1612.6; (3) recipients must maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by §1612.6; and (4) recipients must submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to §1612.6, together with such supporting documentation as is

| specified by the Corporation (45 CFR §§1612.6(d), 1612.10(a), 1612.10(b), 1612.10(c)).

Recipients must have written policies and procedures to guide their staff in complying with this Part (45 CFR § 1612.11).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1612. Determine that policies and procedures are in place to ensure that the recipient does not undertake an activity in violation of 45 CFR § 1612. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 CFR § 1612.
- Determine how the recipient ensures that the policies/procedures detailing the requirements of 45 C.F.R. § 1612 are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity that may fall under the requirements of this regulation. Follow up on all such possible occurrences.
- Determine whether the mandatory recordkeeping requirements associated with this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- Inspect written requests from a governmental agency or official, elected official, legislative body, committee, or member thereof made to an employee, or to a recipient, along with any written responses. Ascertain compliance with 45 CFR § 1612.6.
- Inspect the list maintained by the recipient of any registered lobbyists employed by the recipient. Discuss with these individuals all lobbying activities undertaken by them in order to ensure compliance with 45 CFR § 1612.
- Verify whether the recipient maintains separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by 45 CFR § 1612.6.
- Test expenditures for allowability pursuant to Part 1612. Evaluate supporting documentation and cost allocation methods for adequate recordkeeping and accuracy of the amounts reported.
- Review the recipient's semi-annual reports together with supporting documentation and determine whether the reported activities comply with the regulation. (LSC has provided a sample report form with the LSC Recordkeeping Requirements Memorandum.)
- Review a sample of permissible activities conducted by the recipient using any funds (45 CFR § 1612.5) and those using non-LSC funds (45 CFR § 1612.6), including the

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recordkeeping system in place, in order to determine compliance with the respective provisions. (Auditors should review the documentation required pursuant to 45 CFR § 1612.10(b) for permitted activities with non-LSC funds. Note that in accordance with § 1612.10(b), recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.)

- In assessing compliance with 45 CFR § 1612.4, interview appropriate staff as to whether the recipient engaged in any grassroots lobbying. Follow up on any such activities identified by staff.
- Interview appropriate staff as to whether any person, while employed under the Act and while using resources provided by LSC or private entities (either directly or through a subrecipient), participated in public demonstrations or engaged in activities described in 45 CFR § 1612.7. Follow up on any such activities identified by staff.
- Interview appropriate staff as to whether the recipient conducted or supported training for staff attorneys and paralegals that is prohibited by 45 CFR § 1612.8. Follow up on any prohibited training activities identified by staff.
- Interview appropriate staff to determine whether the recipient undertook organizing activities in violation of 45 CFR § 1612.9. Follow up on any such activities identified by staff.

1613 RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

LSC Regulations

45 CFR §§ 1613.3 and 1613.4

Compliance Requirement

LSC funds shall not be used to provide legal assistance with respect to a criminal proceeding unless authorized by this regulation (45 CFR § 1613.3).

Legal assistance may be provided with respect to a criminal proceeding under the following circumstances: (a) pursuant to a court appointment made under a statute or a court rule of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or (b) when professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient (45 CFR § 1613.4).

Recipients are permitted to use LSC funds to provide legal assistance to a person charged with a criminal offense in an Indian tribal court who is otherwise eligible. Legal assistance may be provided in a criminal proceeding in an Indian tribal court pursuant to a court appointment only if the appointment is made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, and is authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

Recipients are permitted to use public funds under certain circumstances for criminal representation and are permitted to use private funds for criminal representation provided under a separately funded public defender program or project. They are also permitted to undertake court appointments in criminal cases and to use non-LSC funds for such representation (45 CFR § 1610.6).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1613. Review the recipient's policies and practices in place to ensure they conform to the requirements of 45 CFR § 1613.
 - Determine how the recipient ensures that the restrictions are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any attorney representation of a client that may be prohibited by this regulation. Follow up on all such possible occurrences.
 - **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**
-

1614 PRIVATE ATTORNEY INVOLVEMENT (PAI)

LSC Regulations

45 CFR §§ 1614.1, 1614.3, 1614.4, 1614.5 and 1614.6

Compliance Requirement

Recipients of LSC funding are required to devote an amount of LSC and/or non-LSC funds equal to at least 12.5 percent of their annualized LSC basic field award to promoting the involvement of private attorneys, law students, law graduates, or other professionals in the delivery of legal information and legal assistance to eligible clients. The recipient is to demonstrate compliance with this Part by using financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort.

Activities undertaken by the recipient to meet the requirements of this Part must include the direct delivery of legal assistance to eligible clients through programs such as organized pro bono plans,

reduced fee plans, judicare panels, private attorney contracts, modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems (45 CFR § 1614.4(a)(1)).

Activities undertaken by the recipient to meet the requirements of this Part may also include, but are not limited to: (1) support provided by private attorneys to the recipient as part of its delivery of legal assistance or legal information to eligible clients on either a reduced fee or pro bono basis, (2) support provided by other professionals in the areas of their professional expertise to the recipient as part of its delivery of legal information or legal assistance on either a reduced fee or pro bono basis, (3) support provided by the recipient in furtherance of activities

undertaken pursuant to this Part, such as training, technical assistance, research, advice and counsel, or the use of the recipient's facilities, libraries, computer assisted legal research systems or other resources, (4) support provided to bar associations or courts establishing legal clinics at which private attorneys will provide legal information and/or legal assistance, (5) PAI clinics -- for legal information clinics, regardless of whether the clinic screens for eligibility, and for legal assistance clinics if the clinic screens for eligibility, (6) screening and referral systems if the recipient is able to report the number of eligible persons referred by the recipient to each program and the number of eligible persons placed with a private attorney through the program receiving the referral, (7) law student activities supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients but may not include compensation paid by the recipient to the law student. (45 CFR § 1614.4(b)).

The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients are to be determined by the recipients taking into account the following factors: (1) the priorities established pursuant to Part 1620; (2) the effective and economic delivery of legal assistance and legal information to eligible clients; (3) linguistic and cultural barriers to effective advocacy; (4) actual or potential conflicts of interest between specific participating attorneys, law students, law graduates, or other professionals and individual eligible clients; and (5) the substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys

and other professionals (45 CFR § 1614.4(c)).

Systems designed to provide direct services to eligible clients by private attorneys on either a pro bono or reduced fee basis must include, at a minimum, the following components: (1) intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients; (2) case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney; (3) case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and (4) access by private attorneys to LSC recipient resources (45 CFR § 1614.3(a)(3)).

A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in activities under this part. A recipient may not allocate to its PAI requirement costs associated with compensation paid to a private attorney, law student, law graduate or other professional for any hours above 800 hours per calendar year. Consistent with the provisos set out in the regulation, no costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or previous year was employed more than 1000 hours per calendar year by an LSC recipient or subrecipient (45 CFR § 1614.5).

The recipient shall develop a plan and budget to meet the requirements of this regulation which shall be incorporated as part of the refunding application or initial grant application (45 CFR § 1614.4(a)). The recipient must: (1) consult with significant segments of the client community, private attorneys, and bar associations in the

recipient's service area when developing its annual PAI plan; (2) document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area; and (3) summarize the local bar associations' responses to the plan (45 CFR § 1614.6(b)).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1614. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 CFR § 1614. Obtain an understanding of the policies and procedures in place to ensure that costs allocated to PAI meet the requirements of 45 CFR § 1614.7.
- Review the accounting systems and procedures used to identify and account separately for costs related to the PAI effort in order to determine their consistency with 45 CFR § 1614.7. Verify that any applicable supplementary schedules to the audited financial statements reflect proper separate reporting of PAI expenses.
- Review records of PAI expenses. Assess whether the recipient has satisfied the 12.5 percent requirement for PAI expenditures.
- Review and test support for PAI allocations to ensure that the recipient has met all applicable recordkeeping requirements.
- Determine compliance with 45 CFR § 1614.4 by reviewing the recipient's PAI activities and interviewing intake staff (or other appropriate staff, such as the PAI coordinator) regarding the referral process to private attorneys.
- Obtain the recipient's list of private attorneys, law students, law graduates and other professionals who have received compensation for cases during the review period. Contact a sample of these individuals to confirm that the compensated cases were allowable under the LSC Act, regulations and other applicable law.

1615 RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

LSC Regulations

45 CFR §§ 1615.2 and 1615.3

Compliance Requirement

LSC funds may not be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action: (a) is brought against an officer of a court, a law enforcement official, or the custodian of an institution for persons convicted of crimes; and (b) alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official (45 CFR § 1615.2).

proceeding in which the defendant received representation from a recipient pursuant to LSC regulations; or (b) pursuant to a court appointment made under a statute, court rule, or practice of equal applicability to all attorneys in the jurisdiction, so long as it is authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters (45 CFR § 1615.3).

This regulation does not prohibit legal assistance: (a) to challenge a conviction resulting from a criminal

(Also see the foregoing discussion of 45 CFR § 1610 regarding the permissible uses of non-LSC funds.)

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1615. Review the recipient's policies and practices in place to ensure they conform to the requirements of 45 CFR § 1615.
- Determine how the recipient ensures that the restrictions are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any representation of a client that may be prohibited by this regulation. Follow up on all such possible occurrences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1617 CLASS ACTIONS

LSC Regulations

45 CFR §§ 1617.2, 1617.3, 1617.4

Compliance Requirement

Recipients are prohibited from using any funds to initiate or participate in any class action at any stage, other than: (1) non-adversarial activities including efforts to remain informed about, to explain, clarify, educate or advise others about the terms of an order granting relief; (2) representation of individual clients seeking to opt out from a class; or (3) individual representation of a client seeking to obtain the benefit of relief ordered by the court. A class action is any lawsuit filed pursuant to Rule 23 of the Federal Rules of Civil Procedure or

comparable State statute or rule of civil procedure applicable in the court in which the action is filed (45 CFR §§ 1617.2, 1617.3). The definition of a class action does not include a mandamus action or injunctive or declaratory relief actions, unless such actions are filed or certified as class actions.

Recipients must have written policies and procedures to guide their staff in ensuring compliance with this rule (45 CFR § 1617.4).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1617. Obtain an understanding of the recipient's written policies and procedures for ensuring compliance with 45 CFR § 1617 and ascertain whether such policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies and procedures detailing the requirements of 45 CFR § 1617 are effectively communicated to staff and whether these requirements are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the prohibition. Follow up on all such possible occurrences.
- Confirm that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- Obtain the list of class action cases (required to be maintained by the LSC Recordkeeping Requirements Memorandum) in which the recipient or recipient attorney is attorney of record and is involved in non-adversarial activities. This list should contain the case

name; the court; and the status of the case, including a description of the non-adversarial activities. **Verify, by physical inspection of the respective case file, that each case contained on the list complies with Part 1617.**

- Be alert for continuing involvement in prohibited case activity reported by the recipient to LSC as having been fully divested.
 - a. Inquire of class action cases retained by the recipient pursuant to the exceptions identified in the compliance requirement detailed above. Ascertain the type of activity undertaken on these cases and the related time expended on these cases. Evaluate whether the activities engaged in complied with 45 CFR § 1617.3. (Recipients may continue to participate in class actions filed prior to April 26, 1996, for the limited purpose of seeking attorneys' fees for the recipient activity conducted in those cases prior to August 1, 1996.)
 - b. Review time-keeping records for any time spent during the audit period on cases identified as class actions. Follow up to determine compliance with the regulation.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1620 PRIORITIES IN USE OF RESOURCES

LSC Regulations

45 CFR §§ 1620.3, 1620.4, 1620.5, 1620.6, 1620.7

Compliance Requirement

The recipient's governing body must adopt procedures for establishing priorities for the use of all its LSC and non-LSC resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which are to be undertaken by the recipient (45 CFR § 1620.3(a)). The recipient's governing body must have adopted written policies and procedures for undertaking emergency cases or matters (as defined in § 1620.4) that are not within the recipient's priorities (45 CFR § 1620.4).

All staff who handle cases or matters, or make decisions about case acceptance, must have signed a simple agreement, developed by the recipient, indicating that the signatory: (a) has read and understands the priorities established by the recipient's governing body; (b) has read and understands the definition of an emergency situation and the recipient's procedures for dealing with an emergency that falls outside of the recipient's priorities; and (c) will not undertake any case or matter

for the recipient that is not a priority or an emergency (45 CFR § 1620.6).

The recipient must periodically set priorities and its governing body must annually review the priorities or more frequently if the recipient has accepted a significant number of emergency cases (45 CFR § 1620.5(a)). The recipient must report to its governing body quarterly and to LSC annually information on all emergency cases or matters undertaken by the recipient that

were not within the recipient's priorities (45 CFR §§ 1620.7(a) and (b)).

The recipient must submit to LSC and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities (45 CFR § 1620.7(c)).

Suggested Audit Procedures

- Review activity of the recipient's governing body to determine if it has adopted written procedures for establishing priorities in the use of recipient LSC and non-LSC resources and whether it has adopted a written statement of priorities that determines the cases and matters to be undertaken by the recipient.
- Review activity of the recipient's governing body to determine if it has adopted written policies and procedures for undertaking emergency cases or matters not within the recipient's established priorities pursuant to 45 CFR § 1620.4.
- Review the minutes of board meetings to determine whether priorities are set periodically and reviewed by the governing body of the recipient at least annually. (Note that a recipient may maintain separate priorities for each office or for a particular segment of its service area.)
- Determine how the recipient ensures that the policy and procedures are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff responsible for the client intake process as to their knowledge of recipient priorities. Identify all staff who handle cases or matters or make decisions about case acceptance and review their signed written agreements not to undertake non-priority cases or matters, except for those that are emergencies, in accordance with 45 CFR § 1620.6. (Note that this agreement must indicate that the signatory: has read and is familiar with the priorities of the recipient; has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and will not undertake any case or matter for the recipient that is not a priority or an emergency.)

- Confirm that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- Assess compliance with Sections 1620.7(a) and (b). Review board minutes or written documents indicating that quarterly reports were sent or presented to the recipient's governing body on all emergency cases or matters undertaken that were not within the recipient's priorities. Review board minutes or written documents indicating the quarterly reports included a rationale for undertaking each such case or matter and copies of any written documents accompanying the reports. Review the Annual Report of Non-Priority Cases that includes information on all emergency cases or matters undertaken that were not within the recipient's priorities. Obtain an understanding of how the recipient gathers and processes this information for purposes of completing this annual report. **Document this understanding in the work papers.**
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Determine whether the subject matter of the case files falls within the written priorities of the recipient. Adequately document this assessment in the workpapers.**
- Review a sample of program activities falling within the category of "matters" to determine whether the activity falls within the written priorities of the recipient.
- Review the annual report to determine if it contains the provisions required by 45 CFR § 1620.7(c).

1626 RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

LSC Regulations

45 CFR §§ 1626.2, 1626.3, 1626.4, 1626.5, 1626.7, 1626.8, 1626.9, 1626.10, 1626.11, and 1626.12

Compliance Requirement

Subject to certain exceptions discussed below, recipients may not use any funds to provide legal services for or on behalf of aliens. Alien status and eligibility are defined at 45 CFR §1626.5. Aliens eligible for assistance under anti-abuse laws are set out at 45 CFR § 1626.4. (For a detailed description of the categories of aliens who may be eligible to receive representation from recipients, and examples of the documents acceptable as evidence of eligibility, IPAs should consult the LSC issued program letter on the topic.)

Except when the only service provided is brief advice and consultation by telephone or other non-in-person means, a citizen seeking representation must attest in writing in an LSC-approved form to the fact of his or her United States citizenship (45 CFR §1626.6(a)). Further verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen. Factors such as accent, limited English-speaking ability, appearance, race or national origin may not be considered as a reason to doubt citizenship (45 CFR §1626.6(b)).

When a recipient has reason to doubt that an applicant is a citizen it must obtain verification of citizenship by obtaining

originals, certified copies, or photocopies of the applicant's United States passport; birth certificate; naturalization certificate; United States Citizenship Identification Card (Form I-197); a baptismal certificate showing a place of birth within the United States and date of baptism within two months of birth; or any other "authoritative document" such as a document issued by DHS, a court, or another governmental agency that provides evidence of citizenship (45 CFR § 1626.6(b)(1),(2)).

An applicant who is unable to produce such documents may verify his or her citizenship by submitting a notarized statement by a third party unaffiliated with the recipient (and who can provide proof of his or her own citizenship) averring that the applicant is a United States citizen (45 CFR § 1626.6(b)(3)).

Except when the only service provided is brief advice and consultation by telephone or other non-in-person means, an alien seeking representation must submit appropriate documents to verify eligibility. In an emergency, legal services may be provided prior to compliance with all the requirements of §§ 1614.4, 1626.6 and §1626.7 for an alien if the requirements of §1626.8 are satisfied.

If an eligible alien client becomes ineligible due to changed circumstances, the recipient must discontinue representation of the client consistent with applicable rules of professional responsibility (45 CFR § 1626.9).

Exceptions to Citizenship Requirement

The prohibitions contained in Part 1626 are not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands; the Republic of Palau; the Federated States of Micronesia; or the Republic of the Marshall Islands (45 CFR § 1626.10(a)(1)). Moreover, citizens of the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are not considered aliens for purposes of Part 1626 (45 CFR § 1626.10(a)(2)). Nor are Canadian-born American Indians “at least 50 percent Indian by blood” and members of the Texas Band of Kickapoo Indians considered aliens under Part 1626 (45 CFR § 1626.10(b),(c)).

Aliens who qualify as special agricultural workers and whose status is adjusted to that of a temporary resident alien under the Immigration Reform and Control Act (IRCA) may be provided legal assistance after their application for adjustment of status has been filed (so long

as the application has not been rejected), but may not be provided assistance in obtaining adjustment of status to that of temporary resident under IRCA (45 CFR § 1626.10(d)).

A recipient may provide legal assistance to otherwise eligible foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and its implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b) (45 CFR § 1626.10(e)).

Nonimmigrant agricultural workers admitted to, or permitted to remain in, the U.S. pursuant to 8 U.S.C. § 1101(a)(15)(h)(ii), commonly called H-2A agricultural workers, and nonimmigrant forestry workers admitted to, or permitted to remain in, the U.S. under the provisions of 8 U.S.C. § 1101(a)(15)(h)(ii)(b), commonly called H-2B forestry workers, may be provided legal assistance regarding wages; housing; transportation; and other employment rights as provided in the specific contracts under which such workers have been admitted (45 CFR § 1626.11).

Recipients must adopt written policies and procedures to guide their staffs in complying with this Part, and maintain records sufficient to document their compliance (45 CFR § 1626.12).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1626. Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the requirements of 45 CFR § 1626 and ascertain whether the recipient's written policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies and procedures detailing the requirements of 45 C.F.R. § 1626 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the restrictions. Follow up on all such possible occurrences.
- Confirm that the mandatory recordkeeping requirements bearing on this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate casehandler,** inspect the citizenship attestation statement signed by the client (or, if applicable, the recipient's documentation supporting a determination of eligible alien status) contained in the case file to determine compliance with 45 CFR § 1626.6. **Adequately document this assessment in the workpapers.** Where compliance with §§ 1626.6 or 1626.7 is delayed because of emergency circumstances under § 1626.8, the recordkeeping requirements of the LSC Recordkeeping Requirements Memorandum mandate that the recipient include in the client's file written documentation detailing the nature of the emergency.

1627 SUBGRANTS AND DUES

LSC Regulations

45 CFR §§ 1627.2, 1627.3, 1627.4, 1627.6, 1627.8

Compliance Requirement

LSC funds may not be transferred to another entity for the purpose of conducting any of the recipient's programmatic activities without prior LSC approval of a subgrant, unless the transfer is an amount less than \$25,000 paid to a private attorney or law firm for the provision of legal assistance to eligible clients, or is an amount paid for the provision of goods and services by vendors, consultants, or professionals if such goods or services would not be expected to be provided directly by the recipient itself (45 CFR § 1627.2).

With regard to subgrants of LSC funds, recipients must ensure that subrecipient(s) comply with the financial and audit requirements of LSC, specifically including those regarding the proper expenditure of, accounting for, and audit of, delegated funds (45 CFR § 1627.3(c)). Funds of a subrecipient remaining at the end of the grant period must be included in the recipient's fund balance (45 CFR

§ 1627.3(b)(1)). The requirements of § 1627.3 also apply to all subgrants by one recipient to another recipient (45 CFR § 1627.6(a)).

Recipients may not use Corporation funds to pay dues to any private or nonprofit organization other than dues mandated as a requirement of practicing a profession by a governmental organization, but non-LSC funds may be used to pay such dues (45 C.F.R. §1627.4).

Recipients may not make any contributions or gifts of LSC funds to another organization or to an individual (45 CFR § 1627.5).

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with this Part (45 CFR § 1627.8).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1627. Obtain an understanding of the written policies, procedures and recordkeeping in place for ensuring compliance with this regulation and for ensuring that subrecipients comply with the LSC Act, regulations, grant agreements and subgrant agreements.
- Identify all subgrants using LSC funds and determine if prior written approval for the subgrants was obtained from LSC.

- Discuss subrecipient oversight with the recipient's staff to gain an understanding of the scope of these activities, including the number, size, and complexity of awards to subrecipients.
- Review the recipient's documentation of subrecipient oversight to ascertain if the recipient ensured that subrecipients used LSC funds for authorized purposes and in accordance with subgrant agreements.
- Determine whether LSC funds transferred to organizations or private attorneys comply with the requirements of 45 CFR § 1627.
- Confirm that prior approval by LSC was obtained for the use of LSC funds for private attorney contracts in excess of \$25,000 (45 CFR § 1627.2(b)(1)).
- Determine whether LSC funds were used to pay dues or contributions in violation of 45 CFR §§ 1627.4 and 1627.5 by testing expenditures for payments made with LSC funds.
- Verify whether LSC funds received by the recipient from another recipient were properly accounted for in accordance with 45 CFR § 1627.6.

1628 RECIPIENT FUND BALANCES

LSC Regulations

45 CFR §§ 1628.1, 1628.2(a), 1628.3, 1628.4(c) and (e), and 1628.5(a) and (c)

Compliance Requirement

Without prior Corporation approval, a recipient may not use LSC funds to liquidate a deficit in the LSC fund from a prior year (45 CFR § 1628.5).

Without prior Corporation approval, a recipient may not retain a fund balance in excess of 10 percent of LSC "support." For these purposes, Corporation "support"

includes annualized Corporation grant awards plus additional income (a) derived from a Corporation grant, such as interest and rents, and (b) the proportion attributable to any LSC grant of any reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets, or other compensation or income (45 CFR § 1628.2(a)).

Suggested Audit Procedures

- Calculate the recipient's prior year-end LSC fund balance and determine whether the amount exceeded 10 percent of its annualized support (as defined in 45 CFR §1628.2(a)). If so, determine whether the recipient requested and received a waiver for the 10 percent ceiling or, if no waiver was received, repaid LSC the fund balance amount in excess of 10 percent.
- Verify that any income derived from an LSC grant (including interest and rents), and the proportion attributable to any LSC grant of any reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets, or other compensation or income has been properly allocated to the LSC fund as support.
- Determine whether excess fund balance amounts approved by LSC for carryover were expended in accordance with the waiver granted.
- Ensure that the excess fund balance amount approved for expenditure is separately reported in the current year audited financial statements.
- Determine that LSC one-time grants have been accounted for separately as required by 45 CFR §1628.3(e). Test expenditures associated with LSC one-time grants and evaluate whether the expenditures were consistent with the purpose for which the funds were granted.

1630 COST STANDARDS AND PROCEDURES

LSC Regulations

45 CFR 1630

Compliance Requirement

The LSC Act, the annual appropriations acts, and the Corporation's rules, regulations, and guidelines, including the Accounting Guide for LSC Recipients, establish the relevant cost principles for testing compliance under this Compliance Supplement. This regulation is intended to provide uniform standards for allowability of costs.

The standards governing allowability of costs under LSC grants or contracts are set out in 45 CFR §1630.3. Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was: (1) actually incurred in the performance of the grant or contract and the recipient was liable for payment; (2) reasonable and necessary for the performance of the grant

or contract as approved by LSC; (3) allocable to the grant or contract; (4) in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law; (5) consistent with accounting policies and procedures that apply uniformly to both LSC-financed and other activities of the recipient; (6) accorded consistent treatment over time; (7) determined in accordance with generally accepted accounting principles; (8) not included as a cost or used to meet cost-sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that LSC funds may be used for federal matching purposes; and (9) adequately and contemporaneously documented in business records accessible to organizations authorized to conduct audits of recipients (45 CFR §§ 1630.3(a) and (b)).

A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to LSC funds either as direct or indirect costs in accordance with this section. A cost is allocable to an LSC grant or contract so long as it is treated consistently with other costs incurred for the same purpose in like circumstances and it: (1) is incurred specifically for the grant or contract; (2) benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or (3) is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown (45 CFR §§1630.3(c)-(h)).

Without prior written approval of the Corporation, no cost attributable to any of the following may be charged to LSC funds: (1) pre-award costs and costs incurred after the cessation of funding; (2) purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000; (3) purchases of real property; and (4) capital expenditures exceeding \$10,000 to improve real property (45 CFR § 1630.5(b)).

Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation must be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity (45 CFR § 1630.12(a)). Derivative income which is allocated to the LSC fund in accordance with §1630.12(a) is subject to the requirements of this Part, including the requirement that expenditures of such funds be in compliance with the Act, applicable appropriations laws, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law (45 CFR § 1630.12(b)).

No costs attributable to a purpose prohibited by the LSC Act, as defined in 45 CFR § 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided. No cost attributable to an activity prohibited by or inconsistent with Section 504, as defined in 45 CFR § 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes

for which they were provided (45 CFR § 1630.11(a)).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1630. Obtain an understanding of the policies, procedures and practices in place to ensure that costs charged to the LSC grant, and activities undertaken with non-LSC funds, are allowable pursuant to the LSC Act and regulations. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 CFR § 1630. Determine how the recipient ensures that the requirements of 45 CFR § 1630 have been effectively communicated to staff and whether these requirements are followed by staff.
- Test a sample of transactions for conformance with the standards governing allowability of costs under §§ 1630.3(a)-(h) by determining whether the costs:
 - a. were approved by LSC (if prior approval was required);
 - b. conform to the allowability of costs provisions pursuant to applicable cost principles or limitations contained in the LSC grant award, LSC regulations or LSC statutory provisions;
 - c. represent charges for actual costs, not budgeted or projected amounts;
 - d. have been given consistent accounting treatment within and between accounting periods;
 - e. have been calculated in conformity with generally accepted accounting principles; and
 - f. are supported by appropriate documentation (such as approved purchase orders, receiving reports, vendor invoices, canceled checks, and time records) and correctly charged as to account, amount, and period.
- Confirm that a documented cost allocation system is in place in accordance with this regulation. Ascertain whether the cost allocation system accurately accounts for the expenditure of funds and **document your assessment**.
- Confirm that prior approval by LSC was obtained for the use of LSC funds for: (1) pre-award costs and costs incurred after the cessation of funding; (2) purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000; (3) purchases of real property; and (4) capital expenditures exceeding \$10,000 to improve real property (45 CFR § 1630.5(b)).
- Verify that derivative income resulting from an activity supported with LSC funds is allocated to the fund in which the recipient's LSC grant is recorded in the same proportion as

the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity (45 CFR § 1630.12(a)).

1632 REDISTRICTING

LSC Regulations

45 CFR §§ 1632.2, 1632.3, 1632.4

Compliance Requirement

Recipients shall not make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represent any party or participate in any other way in litigation related to redistricting.³ This does not prohibit any litigation brought by a recipient

under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 et seq., provided such litigation does not involve redistricting (45 CFR §§ 1632.2, 1632.3).

Recipients must have written policies to implement the requirements of this Part (45 CFR § 1632.4).

3. Prior to April 26, 1996, recipients could use public, IOLTA or tribal funds for redistricting litigation, if the use of funds for such activity was consistent with the purpose for which such funds were provided. Recipients may still use tribal funds for this purpose, if consistent with the specific purpose for which such funds were provided.

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1632. Obtain an understanding of the written policies in place to ensure compliance with the requirements of 45 CFR § 1632 and ascertain whether the recipient's policies are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies detailing the requirements of 45 CFR § 1632 have been effectively communicated to staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the restrictions of this regulation. Follow up on all such possible occurrences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1633 RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

LSC Regulations

45 CFR §§ 1633.2, 1633.3, 1633.4

Compliance Requirement

Recipients may not defend any person in a proceeding to evict that person from a public housing project if: (a) the person has been charged with or convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)) with the intent to sell or distribute; and (b) the eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been

charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency (45 CFR §§ 1633.2, 1633.3).

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with this Part (45 CFR § 1633.4).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1633. Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with this regulation and ascertain whether the recipient's written policies and procedures are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the written policies and procedures are effectively communicated to staff and whether staff follows them in practice. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the prohibition of this section. Follow up on all such possible occurrences.
- Confirm that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- Obtain the list maintained by the recipient of all cases which involve an eviction from public housing where there is an allegation of drug sale, distribution or manufacture, or possession with intent to sell or distribute. **Verify, by physical inspection of the respective case file, that each case contained on the list complies with Part 1633. Note that in each client's case file, the recipient shall maintain documentation which demonstrates why the representation is permissible.** (LSC has provided a sample form to be included in each case file involving these issues. The sample form is attached to the LSC Recordkeeping Requirements Memorandum.)
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1635 TIMEKEEPING REQUIREMENT

LSC Regulations

45 CFR §§ 1635.1, 1635.2, 1635.3, and 1635.4

Compliance Requirement

All recipients of LSC funds are required to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals, whether funded by LSC or by other sources.

As used in this Part, 45 CFR § 1635.2 provides the following definitions: (a) a "case" is a form of program service in which a recipient attorney or paralegal provides legal services to one or more specific clients, including, without

limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases; (b) a "matter" is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments; (c) a "restricted activities" refers to activities that recipients may not undertake as set out in 45 CFR § 1610; and (d) a "supporting activity" is any action that is not a case or matter, including management in general, and fundraising.

All allowable expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR § 1630 (45 CFR § 1635.3(a)).

Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity (45 CFR § 1635.3(b)). Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise

all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient (45 CFR § 1635.3(b)(1)). Each record of time spent must contain: for a case, a unique client name or case number; and for matters or supporting activities, an identification of the category of action on which the time was spent (45 CFR § 1635.3(b)(2)).

The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type (45 CFR § 1635.3(c)).

Recipients must require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal: (1) has not engaged in restricted activities during any time for which the attorney or paralegal was compensated by the recipient; and (2) has not used recipient resources for restricted activities. Certifications must be made on a quarterly basis on a form determined by LSC (45 CFR § 1635.3(d)).

The certification requirement does not apply to *de minimis* actions related to a restricted activity, such as actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable (45 CFR § 1635.3(d)).

The required timekeeping records are to be made available for examination by auditors and representatives of LSC, and by any other person statutorily entitled access to them (45 CFR § 1635.4)).

Suggested Audit Procedures

- Obtain an understanding of the recipient's timekeeping process in place to ensure compliance with the timekeeping requirements of this regulation. Interview both the Executive Director and the individual responsible for maintaining and tracking the timekeeping system.
- Confirm that the recipient has made any certifications required by Part 1635.3(d) and review the certifications to determine whether the requirements of Part 1635.3(d) have been met.
- Determine how the recipient ensures that the timekeeping and certification requirements are effectively communicated to staff and whether these requirements are followed in practice by staff. Review the recipient's policies and procedures to ensure they conform to the requirements of 45 CFR § 1635. Interview recipient staff concerning the possible existence of any activity inconsistent with the requirements of 45 CFR § 1635 and follow up on any such possible activity.
- Review a sample of management's and staff's timesheets to assess compliance with the program's policy and this regulation.

1636 CLIENT IDENTITY AND STATEMENT OF FACTS

LSC Regulations

45 CFR §§ 1636.2, 1636.3, 1636.5

Compliance Requirement

A recipient must, prior to the initiation of litigation or settlement negotiations, prepare for each case in which it files a complaint in a court of law or institutes or participates in litigation against a defendant, or engages in pre-complaint settlement negotiations where the filing of a suit has been authorized by the plaintiff if negotiations fail, a dated written statement (in English and, if necessary, in another language which the plaintiff understands) signed by each plaintiff, enumerating the particular facts known to the plaintiff supporting the complaint. The recipient must identify each plaintiff by name in any complaint filed (or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice) and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the

plaintiff if the disclosure is not prevented (45 CFR §1636.2).

In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter (45 CFR § 1636.2(c)).

Written statements of fact prepared in accordance with this Part are to be kept on file by the recipient (45 CFR § 1636.3(a)). These may be kept in each client's file or in a central file, in accordance with the recipient's own system of recordkeeping.

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with this Part (45 CFR § 1636.5).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1636. Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the requirements of this regulation. Ascertain whether the recipient's written policies, procedures and recordkeeping are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the written policies and procedures detailing the requirements of 45 CFR § 1636 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any cases where the recipient failed to follow the requirements of this section. Follow up on all such possible occurrences.
- Confirm that the mandatory record-keeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler,** inspect cases filed in court to determine whether a written statement of fact (prepared in accordance with this part) was obtained by the recipient prior to filing the lawsuit. **Adequately document this assessment in the workpapers.** Note that in each case where the recipient: (1) files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, but does not identify the plaintiff(s) by name in the complaint or in a separate notice to the defendant against whom the complaint is filed; or (2) participates in pre-litigation settlement negotiations, but does not identify the plaintiff(s) it represents to prospective defendants, the recipient shall maintain in each such client's file, documentation indicating the reason, under § 1636.2(a)(1), that such identification was not made. If, consistent with §1636.2, preparation and/or signing of the statement of facts is delayed because of an emergency, the recipient also shall maintain in the case file a statement of the nature of the emergency, as required by the LSC Recordkeeping Requirements Memorandum.

1637 RESTRICTION ON LITIGATION ON BEHALF OF A PRISONER

LSC Regulations

45 CFR §§ 1637.2, 1637.3, 1637.4, 1637.5

Compliance Requirement

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a Federal, State or local prison (45 CFR § 1637.3), or participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration (45 CFR § 1637.3). “Incarcerated” means the involuntary physical restraint of a person who has been arrested for or convicted of a crime; “Federal, State or local prison” means any penal facility maintained under government authority (45 CFR 1637.2). (The specification of penal facility is meant to exclude any non-penal detention facility, such as a juvenile or mental health facility, even one housing the criminally insane, from the definition and, consequently, to allow civil litigation on behalf of persons physically restrained in a mental health facility).

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the client's period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration (45 CFR § 1637.4).

Recipients must have written policies and procedures to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with this Part (45 CFR § 1637.5).

Recipients may provide assistance to incarcerated individuals in court appointment or as part of a separately funded public defender project or program.

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1637. Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the restrictions detailed in the regulation. Ascertain whether the recipient's written policies, procedures and recordkeeping are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the written policies and procedures detailing the requirements of 45 CFR § 1637 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the restrictions of this section. Follow up on all such possible occurrences.
- Confirm that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the LSC Recordkeeping Requirements Memorandum. Adequately document this assessment in the workpapers.
- Obtain the list maintained by the recipient of all cases in which the recipient is representing incarcerated clients, in litigation or administrative proceedings challenging the conditions of incarceration. The auditor should be alert for continuing involvement in prohibited case activity previously reported by the recipient to LSC as having been fully divested.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.** Note that in each case where the recipient has knowledge that a person whom the recipient is representing in civil litigation has become incarcerated after the litigation commenced, the recipient must include in the client's file either: (a) documentation evidencing the date of the recipient's notification of the client's incarceration, and the recipient's efforts to withdraw from the litigation; or (b) a statement detailing the reason(s) why the recipient anticipates that the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration.

1638 RESTRICTION ON SOLICITATION

LSC Regulations

45 CFR §§ 1638.2, 1638.3, 1638.4, 1638.5

Compliance Requirement

Recipients are prohibited from representing clients and referring individuals to other recipients as a result of unsolicited in-person advice. In-person unsolicited advice is a face-to-face encounter or a personal encounter via other means of communication (such as a personal letter or telephone call) advising the individual or client, who did not seek that advice or have an attorney-client relationship with the recipient, to obtain counsel or take legal action (45 CFR §§ 1638.2, 1638.3).

This Part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public

service announcements, maintaining an ongoing presence in a courthouse (at the invitation of the court) to provide advice, disseminating community legal education publications, and giving presentations to groups that request them (45 CFR § 1638.4(a)). Nor does it prohibit representation or referral of clients by recipients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including the institutionalized or physically or mentally disabled (45 CFR §1638.4).

Recipients must have written policies to implement the requirements of this Part (45 CFR § 1638.5).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1638. Review the recipient's written policies in place to ensure they conform to the requirements of 45 CFR § 1638.
- Determine how the recipient ensures that the policies detailing the requirements of 45 CFR § 1638 are effectively communicated to staff and whether these policies are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the restrictions of this section. Follow up on all such possible occurrences.

1639 WELFARE REFORM

LSC Regulations

45 CFR §§ 1639.2, 1639.3, 1639.4, 1639.5, 1639.6

Compliance Requirement

Except as provided below, recipients may not initiate legal representation, or participate in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in: (a) litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system; (b) rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system; (c) lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system (45 CFR §1639.3).

The scope of the two definitions in this regulation is critical to its interpretation:

(a) *An effort to reform a Federal or State welfare system* includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or under State mandates;

(b) *Existing law* means Federal, State or local statutory laws or ordinances which are enacted as an effort to reform a Federal or State welfare system and regulations issued pursuant thereto that have

been formally promulgated pursuant to public notice and comment procedures (45 CFR §1639.2).

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency, without regard to whether the relief sought involves an effort to amend or otherwise challenge existing welfare reform law (*see* 45 CFR § 1639.4).

Consistent with the provisions of § 1612.6(a) through (e), recipients may use non-LSC funds to comment in a public

rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system (45 CFR § 1639.5).

Recipients must have written policies and procedures to guide their staff in complying with this Part (45 CFR § 1639.6).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1639. Review the recipient's written policies and procedures in place to confirm they are consistent with the requirements of 45 CFR § 1639.
- Determine how the recipient ensures that the written policies and procedures detailing the requirements of 45 CFR § 1639 are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the prohibitions of this section. Follow up on all such possible occurrences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1643 RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

LSC Regulations

45 CFR §§ 1643.3, 1643.4, 1643.5

Compliance Requirement

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of: (a) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual; (b) compelling any person, institution, or governmental entity to provide or fund any

item, benefit, program, or service for such purpose; or (c) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual (45 CFR § 1643.3).

Recipients shall adopt written policies to guide their staff in complying with this Part and shall maintain records sufficient to document the recipient's compliance with this Part (45 CFR § 1643.5).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1643. Obtain an understanding of the written policies and recordkeeping in place and determine if the recipient's written policies and recordkeeping are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the written policies detailing the requirements of 45 CFR § 1643 are effectively communicated to staff and whether the staff follows them in practice. Interview recipient staff as to their knowledge concerning the possible existence of any activity falling under the prohibitions of this section. Follow up on all such possible occurrences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1644 -- DISCLOSURE OF CASE INFORMATION

LSC Regulations

45 CFR §§ 1644.3, 1644.4, 1644.5

Compliance Requirement

For each case filed in court by its attorneys on behalf of a client of the recipient, a recipient shall disclose, in accordance with the requirements of this Part, the following information: (1) the name and full address of each party to a case; (2) the cause of action; (3) the name and full address of the court where the case is filed; and (4) the case number assigned to the case by the court (45 CFR § 1644.4(a)). Recipients shall provide the information required in § 1644.4(a) to LSC in semiannual reports in the manner specified by LSC. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants (45 CFR § 1644.4(b)). Upon request, a recipient shall make the information required in § 1644.4(a) available in written form to any person (45 CFR § 1644.4(c)).

The case disclosure requirements of this part apply: (1) to actions filed on behalf

of plaintiffs or petitioners who are clients of a recipient; (2) only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant; (3) to a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and (4) to cases filed pursuant to subgrants under 45 CFR Part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement (PAI) activities under Part 1614 of these regulations. (This Part does not apply to any cases filed by private attorneys as part of a recipient's PAI activities pursuant to Part 1614 of these regulations) (45 CFR §§ 1644.3(a) and (b)).

Each recipient shall adopt written policies and procedures to implement the requirements of this Part (45 CFR § 1644.5).

Suggested Audit Procedures

- Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1644. Obtain an understanding of the policies and procedures in place ensuring compliance with the requirements of this regulation and determine whether the recipient's written policies and procedures are consistent with the provisions of the regulation.
- Program Letter 98-5 provides guidance as to the timing and format of the semiannual case disclosure reports required by this regulation. These reports must be submitted by the

recipient to LSC on the sample form provided by LSC or on other forms containing the same information requested by LSC. **Confirm that these reporting requirements are in place and that the semiannual case disclosure reports have been properly prepared and submitted to LSC on a timely basis in accordance with Program Letter 98-5.** Verify, on a test basis, the information contained in the semiannual case disclosure reports. Document this review in the workpapers.

- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, be alert for any cases that may fall under the reporting requirements of this regulation that have not been included in the semiannual case disclosure reports. Follow up on and document all such exceptions in the workpapers.**

OTHER STATUTORY PROHIBITIONS

Section 1007(b)(8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

Section 1007(b)(9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, with the

proviso that nothing in that paragraph prohibits the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b)(10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

Public Law 104-134

Abortion

Section 504(a)(14) of the 1996 Act provides: “None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a "recipient") . .

(14) that participates in any litigation with respect to abortion”

Guidance on Compliance Requirement

With this provision, the previously existing statutory prohibition on the use of LSC funds for litigation relating to abortion is extended to all funding regardless of source. The restriction in the LSC Act, Section 1007(a)(8), prohibiting all legal assistance (not just litigation) concerning the procurement of non-therapeutic abortions, continues in effect subject to 45 CFR §§ 1610.2 and 1610.3

Suggested Audit Procedures

- Obtain an understanding of the policies, practices and internal controls in place to ensure compliance with each of the statutory prohibitions identified above. Review the recipient’s policies and procedures to ensure they conform to the relevant statutory requirements.
- Determine how the recipient ensures that these statutory requirements have been effectively communicated to staff and whether the staff follows them in practice. Interview recipient staff as to their knowledge concerning the possible existence of any activity prohibited by the statutory requirements. Follow up on any such alleged prohibited activity.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with these statutory prohibitions. Adequately document this assessment in the workpapers.**

OTHER COMPLIANCE REQUIREMENTS

Accounting Requirements

Recipients are required to adhere to requirements of the Accounting Guide for LSC Recipients (August 2010) including LSC's "*Fundamental Criteria of an Accounting and Financial Reporting System*." This Accounting Guide sets forth

financial accounting and reporting standards for recipients of LSC funds, and describes the accounting policies, records, and internal control procedures to be maintained by recipients to ensure the integrity of accounting, reporting and financial systems.

Suggested Audit Procedures

- Review the recipient's contracting policy to ensure that it is in accordance with LSC's "*Fundamental Criteria of an Accounting and Financial Reporting System*." Confirm that the policy requires all contract files and related information be centrally located, that a written contract be on file and that approval be at the appropriate level.
- Determine if the recipient has adequate procedures for evaluating contract bids and quotes and selecting the vendor.

Property Management Requirements

The recipient must maintain a property management system for its LSC-funded activities that is adequate to meet the

standards of LSC's Property Acquisition and Management Manual (October 2001) and the Accounting Guide for LSC Recipients (August 2010).

Suggested Audit Procedures

- Determine whether the recipient maintains proper records for and adequately safeguards property:
 - a. Obtain an understanding of the recipient's policies and procedures for property management and ascertain if they are in accordance with LSC's Property Acquisition and Management Manual and the Accounting Guide for LSC Recipients (August 2010);
 - b. Select a sample of property transactions and test for adherence to LSC's Property Acquisition and Management Manual and the Accounting Guide for LSC Recipients (August 2010);

- c. Inquire whether a physical inventory of property purchased with LSC funds has been taken recently and, if applicable, test whether any differences between the physical inventory and property records were resolved;
 - d. Identify property acquired with LSC funds during the audit period and trace selected purchases to the property records. Verify that the property records contain the following information about the property: description, including model and serial number or other identification number; source of funds used for acquisition; inventory control number; acquisition date and cost; location; useful life; and, if applicable, date of disposal and sales price; and
 - e. Select a sample of property acquired with LSC funds from the property records and physically inspect the property, including ascertaining whether it is appropriately safeguarded.
- Determine the amount of property dispositions for the audit period and verify that dispositions were properly classified between property acquired with LSC funds and property otherwise acquired.

Grant Award Requirements

The grant award document(s) may have special terms and conditions that should be considered during the audit. IPAs

should determine the significant compliance requirements from the grant document, and develop audit procedures to test compliance with those requirements.

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